

FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
APPELLATE DIVISION OF ST. CROIX**

PETRA ARROYO, )  
Plaintiff/Appellee, ) **D.C. CIV. APP. No. 1998/159**  
 )  
v. ) Re: T.C. S.C. No. 363/1998  
 )  
EVERTON D. BRADSHAW, )  
Defendant/Appellant.)  
\_\_\_\_\_ )

On Appeal from the Territorial Court of the Virgin Islands

Considered: March 24, 2000  
Filed: June 1, 2000

**BEFORE:** **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **IVE A. SWAN**, Territorial Court Judge, Division of St. Thomas/St. John, Sitting by Designation.

**APPEARANCE:**  
**EVERTON D. BRADSHAW, PRO SE**<sup>1</sup>  
St. Croix, U.S. Virgin Islands

**OPINION OF THE COURT**

PER CURIAM

This appeal arose out of an action for damages. The issue presented is whether the trial court erred in entering judgment in favor of Petra Arroyo after finding that Everton Bradshaw had operated his vehicle in a negligent manner.

**FACTS**

On January 16, 1998, Petra Arroyo ("Arroyo" or "appellee") and

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<sup>1</sup> Appellee did not appear in this action.

Everton Bradshaw ("Bradshaw" or "appellant") were involved in a car accident in the parking lot of the Aureo Diaz Housing office. The only undisputed facts are that both parties were parked directly opposite each other, there was a collision, and the tailgate on the passenger's side of Arroyo's S-10 pickup truck was damaged. Arroyo brought an action in small claims court seeking Five Hundred Ninety-Two Dollars and Forty Cents (\$592.40) in damages plus Twenty-Five Dollars (\$25.00) in court costs against Bradshaw.

In a bench trial which commenced on June 2, 1998, Arroyo argued that she had completely reversed from her parking space and was ready to proceed forward when Bradshaw hit the tailgate of her truck. Bradshaw testified that he saw appellee's truck before getting into his vehicle, but could not recall whether appellee was in it at the time. As he reversed, he allegedly kept his eyes on another vehicle that was reversing from the space next to appellee. In so doing, Bradshaw did not see Arroyo as she reversed from the spot directly behind him. Bradshaw contends that because both he and Arroyo were reversing at the same time and hit each other, they were equally liable and he should not have been ticketed by the investigating officer for "improper reverse". Arroyo countered by arguing that the other vehicle had reversed and left the lot by the time she reversed from her parking space. Finally, Bradshaw contends that after the impact, both he and Arroyo admitted not

seeing the other reversing.

The trial judge found that appellant had been negligent in operating his vehicle and entered judgment in favor of appellee. This appeal followed.

## DISCUSSION

This Court has appellate jurisdiction to review the judgments and orders of the territorial court in all civil cases. V.I. CODE ANN. tit. 4, § 33 (1997 & Supp. 1999); Section 23A of the Revised Organic Act of 1954.<sup>2</sup>

The appropriate standard of review is whether the trial court's finding of negligence is clearly erroneous. *Government of the Virgin Islands v. Pant*, 30 V.I. 259, 262 (D.V.I. App. Div. 1994); see also FED. R. CIV. P. 52(a). This appellate court may not substitute its own findings, but may only assess whether enough evidence existed to support the lower court's findings. See 4 V.I.C. § 33; *Francis v. Emery Constr. Mgt. Co.*, 11 V.I. 74 (D.V.I. App. 1974). "Clear error exists when, giving all deference to the opportunity of the trial judge to evaluate the credibility of witnesses and to weigh the evidence, we are 'left with a definite

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<sup>2</sup> The Revised Organic Act of 1954 is found at 48 U.S.C. § 1613a (1994), reprinted in V.I. CODE ANN., Organic Acts, 73-177 (codified as amended) (1995 & Supp. 1998) (preceding V.I. CODE ANN. tit. 1) ["Revised Organic Act"].

and firm conviction that a mistake has been committed.'" *Anderson v. Bessemer City*, 470 U.S. 564, 573, 105 S. Ct. 1504 (1985).

The Virgin Islands Code provides in relevant part that:

It shall be unlawful for any person to operate a motor vehicle in a negligent manner over and along the public highways of this Territory. For the purpose of this section to "operate in a negligent manner" means the operation of a vehicle upon the public highways of this Territory in such a manner as to endanger or be likely to endanger any person or property.

20 V.I.C. § 503, and specifically includes parking areas under the ambit of "public highways":

The provisions of this chapter and its regulations relative to traffic shall be applicable to every driver of a motor vehicle in all parking areas open to the public, which parking areas shall be considered for the purposes of this chapter to be public highways.

20 V.I.C. § 552. The elements of a negligence cause of action are duty, breach of duty, causation and damages. *Logan v. Abramson Enterprises*, 30 V.I. 72, 73 (D.V.I. 1994); RESTATEMENT (SECOND) OF TORTS § 281 (1965). After hearing the testimony of both parties, the relevant part of the trial judge's ruling is as follows:

The Court finds that Mr. Bradshaw's attention was turned to the red car and that is very easy to understand in these situations, in these parking lot situations, and that he reversed negligently because he failed to maintain a complete proper lookout thereby causing this accident.

The Court finds that the tailgate to the Plaintiff's pickup truck was damage[d]; two estimates of repairs submitted, the lower is the estimate of \$592.40. The Court finds the reasonable cost of the necessary repairs amounts to \$592.40 and will grant Plaintiff judgment in

that sum along with \$25.00 for an estimate and Court costs of \$40.

(Appellant's Appendix at 15.) The trial judge examined the arguments of both parties and was in the best position to weigh their credibility. The record before this Court is devoid of any facts which create a definite and firm conviction that a mistake has been committed in finding appellant negligent. The trial judge's finding of negligence and judgment in favor of appellee, Petra Arroyo, were not clearly erroneous and shall be affirmed.

**DATED** this 1 day of June 2000.

**A T T E S T:**  
**ORINN ARNOLD**  
**Clerk of the Court**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk